

STATE OF MICHIGAN
COURT OF APPEALS

TRANS-AMERICA CONSTRUCTION
COMPANY,

Plaintiff-Appellant,

v

COMERICA BANK,

Defendant-Appellee,

and

YVONNE WALLER-JORDAN, d/b/a C.A.
WALLER & ASSOCIATES, LEMUEL A.
WALLER, d/b/a L.W. SERVICES, MARCUS R.
WALLER, MARCMOND BUILDERS, DEANNA
P. WALLER, d/b/a PREFERRED BUILDING
CONTRACTORS,

Defendants/Cross-Defendants,

and

BANK ONE MICHIGAN,

Defendant,

and

SAMI, INC.,

Defendant/Cross-Plaintiff/Cross-
Defendant,

and

NATIONAL CITY BANK OF
MICHIGAN/ILLINOIS,

Defendant/Cross-Plaintiff.

UNPUBLISHED
February 28, 2003

No. 237662
Wayne Circuit Court
LC No. 00-011016 NZ

Before: Kelly, P.J., and White and Hoekstra, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. The circuit court erred in concluding that there were no genuine issues of material fact regarding whether a partnership existed between plaintiff and Waller with respect to the Bell project. Stanaj's affidavit was sufficient to create a genuine issue whether the relationship was a partnership or that of lender and borrower. Stanaj described the lender-borrower relationship and asserted that plaintiff had no involvement in the administration and control of the Bell job, and that the one-half share of the profit was to serve as interest on the loan.

MCL 449.7 provides:

In determining whether a partnership exists, these rules shall apply:

* * *

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

* * *

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

* * *

Where profits are paid as interest on a loan, the payment does not support the inference of a partnership relationship. Further, even where the inference is applicable, the receipt of profits is only prima facie evidence of a partnership, and is not conclusive. See *Lobato v Paulino*, 304 Mich 668, 675-676; 8 NW2d 873 (1943). The intent of the parties controls. Here, Stanaj's affidavit created a genuine issue whether the parties to the transaction intended the Bell project to be a joint enterprise or intended to assume a lender-borrower relationship.

I would reverse and remand for further proceedings.

/s/ Helene N. White